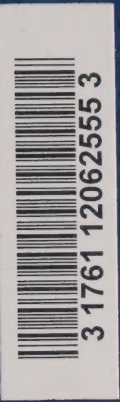


CA20N
L72
- 1991
058

Government
Publications



CA20N
L72
-1991
058

Government of Ontario
Publication

Ontario Human Rights Commission Policy Statement on Racial Slurs and Harassment and Racial Jokes

Published November 1989
Reprinted November 1991
Disponible en français

 **Ontario**
Human Rights Commission

(i) Harassment - General Principles

Harassment is defined in s.9(1)(f) of the *Code* to mean "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

The reference to comment or conduct "that is known or ought reasonably to be known to be unwelcome" imports an objective element into the definition of harassment. This factor acknowledges that in some situations it should be anticipated that the racially motivated conduct or comments would be offensive or unwelcome and there is no requirement that the behaviour be objected to before a violation of the *Code* is found. This element of the definition also recognizes that in many instances, it would be unreasonable to require an individual, who may be in a vulnerable position, to object to the offensive treatment before being able to claim a right to be free from such treatment. Therefore, if a person engages in a course of activity or comment which refers to or emphasizes the race or other race-related characteristics of an individual, and it could reasonably be anticipated that such comment or conduct would be unwelcome, then that person may be considered to have engaged in harassment, contrary to the provisions of the *Code*.

It should be noted that in order for the harassment provisions of the *Code* to apply, the activity at issue need not expressly refer to a person's race, place of origin, creed, etc. but need only be motivated by those considerations. For example, in circumstances where an individual is consistently treated in a less favourable manner, e.g. is repeatedly

made the brunt of practical jokes or ridicule, an inference may be drawn from the particular circumstances that the treatment was racially motivated although the practical jokes or ridicule may not have contained any reference to race.

Each situation will be assessed on its own merits. However, racial epithets, comments ridiculing individuals because of race-related physical characteristics, religious dress, etc. or singling an individual out for humiliating or demeaning "teasing" or jokes related to race or to any of the race-related grounds, would in most instances be viewed as conduct or comments which "ought reasonably to be known to be unwelcome."

Conduct or comments which are motivated by consideration of a person's membership in one of the race-related groups and which may not, on their face, be considered offensive on an objective basis, may still be "unwelcome" from the perspective of a particular individual. If the individual clearly indicates that this is the case, then a repetition of a similar type of activity will, in most instances, constitute a violation of the *Code*.

It should be noted that the jurisprudence in the area of "harassment" is in its early stages of development. It is the view of the Commission that some circumstances which may not clearly come within the harassment provisions may nevertheless be covered under the *Code* under the general equality rights provisions. These circumstances and accompanying issues are discussed more fully in the next section.

EQUALITY RIGHTS - POISONED ENVIRONMENT

The *Code* provides a right to equal treatment in the areas of services, goods, facilities, accommodation, contracts, employment and membership in a vocational association (Sections 1 - 5). It is the position of the Commission that offensive or threatening comments or conduct may, in some instances, have the effect of "poisoning" the environment for persons affected. As a result, those individuals are subjected to terms and conditions of employment, tenancy, services etc. that are quite different from those experienced by individuals who are not subjected to the same type of comments or treatment. In such instances, the right to equal treatment may have been violated.

Again, every situation will be judged on its merits. However, an example of a situation which could be viewed as a violation of the *Code* by creating a "poisoned environment" would be one in which a supervisor or a landlord says to a person who is a member of a racial minority, "I don't know why you people don't go back to where you came from, because you sure don't belong here." Even though the statement may be made only once, the person at which it is directed, or those persons that are included in the group identified, will quite validly have concerns regarding their long term prospects in that workplace or rental unit. Other employees or

tenants who are not members of that racial group will not experience the same concern and anxiety.

Similarly, persons who encounter comments, signs, caricatures, or cartoons displayed in a service environment such as a store, restaurant etc. or a work or tenancy situation which depict members of their race, religious group etc., in a demeaning manner may be subjected to a "poisoned environment" in violation of the *Code*. This is also the case with graffiti of a similar nature when the service provider, employer, or landlord is aware of it, but does nothing to have it removed. Depending on the particular circumstances it may be the case that those persons are humiliated or experience feelings of anger and resentment that others in that setting do not have imposed upon them because of their race.

It should also be noted that individuals who are not the specific targets of a discriminatory comment or action or who are not members of the targeted group may also have a right to bring a complaint in circumstances such as those described above.

Such a right has been upheld in other jurisdictions and is based on the following principle: regardless of whether an individual has been targeted as the object of discriminatory treatment, if exposure to such treatment has a negative impact upon the "sensibilities" of an individual, that individual's rights have been violated. Similarly, in a situation dealing with discriminatory rental practices aimed at members of visible minorities, it has been held

that a caucasian tenant had the right to bring a complaint on the basis that that tenant had been injured by the loss of important benefits from inter-racial associations.

The application of these principles is discussed in more detail below.

COMMENTS OR ACTIONS NOT DIRECTED TOWARD A PARTICULAR INDIVIDUAL

As indicated above, in the Commission's view, the equality provisions of the *Code* may be breached by racial slurs or actions which are not directed toward a particular individual but nonetheless adversely affect the environment for that individual. Examples include the following:

- demeaning racial remarks, jokes or innuendos about an employee, client or customer, or tenant told to other employees, tenants, clients or customers
- may impair the right of those persons who are the subject of the comments to be viewed as equals and create a "them/us" barrier.

- racial remarks, jokes or innuendos made about other racial groups in the presence of an employee, tenant or client
- may create an apprehension on the part of members of other racial minorities that they are also targeted when they are not present.
- the displaying of racist, derogatory or offensive pictures, graffiti or materials
- is humiliating and also impairs the right of those persons who are members of the targeted racial group to be viewed as equals.
- racial remarks, jokes or innuendos about an employee, client, or tenant or about the racial group of which they are a member, which are stated to or in the presence of a non-racial minority person
- may cause discomfort on the part of the non-racial minority person and may have the effect of creating an environment where the opportunity for beneficial inter-racial interaction is lost or impaired.

In the above or similar situations, the conduct at issue must be objectively evaluated. It must be of such a nature and degree so as to amount to a denial of equality through the creation of a poisoned environment.

THE LIABILITY OF PRINCIPALS FOR THE ACTIONS OF THEIR AGENTS

An employer may be liable for acts of harassment carried out by its employees through the "organic theory of corporate responsibility". This theory provides that where an employee is in a position of authority (i.e. part of the "directing mind") in the organization, the employer will be held responsible for the actions of that employee. To put it in more direct terms, the acts of supervisors, managers, etc. are considered to be the acts of the employer.

The employer's liability as described in the preceding paragraph is to be distinguished from vicarious liability. The *Code* (s.44(1)) provides that anything done or omitted to be done by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization in the course of his or her employment shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization. This means that those bodies will be held responsible for breaches of the *Code* committed by their employees or agents, as though they had committed the breaches themselves. This principle applies not only to employers, but also to providers of accommodation and providers of service.

Although the doctrine of vicarious liability does not apply to harassment as defined in s.9(1)(f) of the *Code*, it does apply to breaches of the equality rights provisions. In this regard, please refer to the "Equality Rights - Poisoned Environment" section of this paper.

It should also be noted that pursuant to s.38(2) of the *Code*, a board of inquiry that is hearing a complaint of harassment can add as a party to the hearing, any person who knew or should have known of the harassment from the information or facts in his or her possession and who failed to prevent the harassment or penalize the harasser although it was within his or her authority to do so. Subsection 40(4) then enables the board of inquiry to remain seized of the matter. This means that in the event the harassment continues, the board can reconvene. Persons who believe that such circumstances exist should bring them to the attention of the Commission. If, following an investigation, the Commission finds that in its view, the evidence supports the allegation that the harassment has continued, the Commission will request that the Minister reconvene the board of inquiry to hear the matter. If the board then finds that a party who knew, or should have known about the harassment failed to exercise his or her authority to prevent or penalize the repetition of the harassment, the board can order that person to take whatever steps are reasonable to prevent any further continuation of the harassment.

It is very important, therefore, that employers, including those whose business it is to provide accommodation or services, have policies in place making it clear that activity which results in a poisoned environment is prohibited in the context of the workplace, whether directed at employees, clients, customers, or tenants and will be met with strict discipline if it occurs. Similarly, it is important that managers and supervisors be instructed to ensure that all staff are aware of the policy and to deal with any such incidents which come to their attention quickly and effectively.

RIGHT TO FILE A COMPLAINT

When a person believes that he or she has been discriminated against or harassed in any of the areas and on any of the grounds covered by the *Code*, he or she may bring a complaint to the Ontario Human Rights Commission. A complaint may be filed by contacting the nearest office of the Commission.

The Commission also has the authority to initiate a complaint. It has been the practice of the Commission to do this only when no individual complainant is available.

As stated throughout this document, each situation will be assessed on its merits by the Commission following an investigation and after receiving submissions from all the parties. In deciding what action to take, the Commission will take into consideration the context within which the comment or action took place, the history and relationship of the parties as well as the actions, if any, taken to remedy the incident.

COLLECTIVE AGREEMENTS AND COMPANY POLICIES

An increasing number of collective agreements include clauses relating to discrimination and harassment. In addition to the rights available under the *Code*, a person may have rights which he or she may pursue under a collective agreement. Similarly, a number of companies have implemented policies in this regard which may afford a remedy to a person who has been harassed or otherwise discriminated against. However, parties cannot contract out of the *Code* and neither a collective agreement nor a company policy can preclude a person from pursuing his or her rights under the *Code*.

CONCLUSION

People have the right to live and work in an environment free of demeaning comments and actions based on race, ancestry, place of origin, colour, ethnic origin, citizenship and creed. This type of activity is a destructive practice which affects everyone. Even when meant as a joke, it is derogatory and humiliating in its effect.

THE ONTARIO HUMAN RIGHTS COMMISSION

Ontario Human Rights Commission
400 University Avenue, Toronto, Ontario M7A 2R9
Tel: (416) 314-4500
TDD: (416) 314-4535

Address all correspondence to your closest District Office:

HAMILTON

110 King Street West
Suite 310
L8P 4S6
Tel.: (416) 521-7870
1-800-668-9508
TDD: (416) 546-8278

KENORA

227 2nd Street South
3rd Floor
P9N 1G1
Tel.: (807) 468-2866

KINGSTON

80 Queen Street
Suite 202
K7K 6W7
Tel.: (613) 548-6750
1-800-461-2958
TDD: (613) 267-5755

KITCHENER

824 King Street West
4th Floor
N2G 1G1
Tel.: (519) 570-9622
1-800-263-9525

LONDON

255 Dufferin Avenue
Suite 601
N6A 5K6
Tel.: (519) 438-0076
1-800-268-8333
TDD: (519) 438-4207

MISSISSAUGA

2 Robert Speck Parkway
Suite 310
L4Z 1H8
Tel.: (416) 273-7811
1-800-268-2808
TDD: (416) 273-6648

OTTAWA

255 Albert Street
4th Floor
K1P 6A9
Tel.: (613) 232-0489
1-800-661-0228
TDD: (613) 232-3909

SAULT STE. MARIE

390 Bay Street
3rd Floor
P6A 1X2
Tel.: (705) 942-8417
1-800-461-0551

SCARBOROUGH

2500 Lawrence Avenue East
2nd Floor
M1P 2R7
Tel.: (416) 750-3575
1-800-268-6585
TDD: (416) 750-3302

ST. CATHARINES

1 St. Paul Street
Suite 603
L2R 7L4
Tel.: (416) 684-7406
1-800-263-4916

SUDBURY

199 Larch Street
6th Floor
P3E 5P9
Tel.: (705) 675-4391
1-800-461-4000
TDD: (705) 675-6392

THUNDER BAY

28 North Cumberland St.
Suite 403
P7A 4K9
Tel.: (807) 343-6003
1-800-465-8996

TIMMINS

210 Spruce St. South
Suite 103
P4M 2M5
Tel.: (705) 268-2838
1-800-461-7863

TORONTO CENTRAL

595 Bay Street
4th Floor
M5G 2C2
Tel.: (416) 326-9511
TDD: (416) 326-9669

WINDSOR

500 Ouellette Avenue
Suite 305
N9A 1B3
Tel.: (519) 256-8278
1-800-265-5140
TDD: (519) 256-4410

Toll-Free Long Distance: If you are outside the local area and within the area code, call the number listed under 1-800.



Digitized by the Internet Archive
in 2024 with funding from
University of Toronto

<https://archive.org/details/31761120625553>

